

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of	)	
<b>BONNIE REX</b> against <b>CONSUMERS ENERGY</b>	)	Case No. U-18395
<b>COMPANY.</b>	)	
_____	)	

At the November 21, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**OPINION AND ORDER**

History of Proceedings

On May 16, 2017, Bonnie Rex (Complainant) filed a complaint against Consumers Energy Company<sup>1</sup> (Consumers or Respondent) alleging that the utility had falsely accused her of theft of electricity at her home and harassed her over a course of events that took place during April and May 2017.<sup>2</sup> Consumers issued Ms. Rex a notice that her electric service may be discontinued if she does not pay for unauthorized use of electricity as determined by Consumers. She denied that she tampered with her meter and denied that she owes for unauthorized use. On July 11, 2017,

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<sup>1</sup> Ms. Rex' complaint listed "Consumers Power" as the company against whom she was filing. Consumers Energy Company was formerly known as Consumers Power Company.

<sup>2</sup> Ms. Rex' complaint also sets forth events and issues that occurred in 2015 and were resolved via a settlement agreement. Accordingly, those matters will not be addressed in this order.

Consumers answered the complaint and requested that it be dismissed in its entirety, with prejudice. An evidentiary proceeding was held on July 18, 2017, before Administrative Law Judge Lauren G. Van Steel (ALJ). Ms. Rex, appearing in *pro per*, Consumers, and the Commission Staff (Staff) participated in the hearing. The record consists of 95 pages of testimony and 18 exhibits.

### Proposal for Decision

On August 18, 2017, the ALJ filed a proposal for decision (PFD). She concluded that the Complainant had met her burden of proof that she did not tamper with her meter, should not be billed for unauthorized service, and is entitled to opt out of installation of a smart meter. She also found that the Complainant did not meet her burden of proof that Consumers had harassed her. The ALJ suggested that the Commission order Consumers to rescind the shutoff notice, replace the smart meter at Ms. Rex' residence with a digital meter, and dismiss the balance of the complaint with prejudice. PFD, pp. 32-33. A full accounting of the facts and evidence is contained in the PFD and will not be repeated in this order, except as needed for clarity.

### Exceptions to the Proposal for Decision

Exceptions to the PFD were due September 15, 2017. Ms. Rex filed exceptions; the Staff and Consumers did not. Replies to exceptions were due September 29; none was filed.

Ms. Rex' exceptions document includes photos of her property, a copy of her complaint, a brief restatement of her complaint, and a statement of her desired remedies. Granting broad interpretation of the rule, the document does not contain any statement that may be deduced as a "reasoned discussion of the evidence and the law," as required by Mich Admin Code, R 792.10435(3). Again, giving broad interpretation of the rule, Ms. Rex' exceptions filing does not meet the additional requirement of a clear and concise recitation of the "specific findings of

fact and conclusions of law to which exception is taken or the omission of, or imprecision in, specific findings of fact and conclusions of law to which the party accepts,” as set forth in R 792.10435(4). Accordingly, the document cannot be considered to constitute exceptions to the PFD.

#### Request to Reopen the Record

Ms. Rex’ exceptions filing includes a request for another hearing “if need be.” As set forth above, she attached photos of her home and restates her complaint that Consumers has been harassing her for years and falsely accused her of meter tampering. She also requests that Consumers install an analog meter, make an appointment in advance of doing so, and avoid sending a specific employee to handle the installation.

Mich Admin Code, R 792.10436(1) provides that a proceeding may be reopened when further evidence is necessary for a full and complete record or there has been a change in the conditions of fact or law such that the public interest requires the reopening of the proceeding. The exceptions filing does not indicate that additional evidence exists or that there has been a change in conditions of fact or law. Examination of the record reveals that Ms. Rex was provided opportunity to present evidence of her complaints and desired remedies, including those that are stated in her exceptions filing. Accordingly, her request to reopen the record is denied, and a decision will be issued based on the evidence presented at the hearing, with consideration of the ALJ’s PFD.

#### Discussion

Mich Admin Code, R 792.10439 provides, in pertinent part, that:

A complaint shall be limited to matters involving alleged unjust, inaccurate, or improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility . . . .

Mich Admin Code, R 792.10441(1)(d) provides, in pertinent part, that the complaint shall set forth:

A concise statement of the facts on which the complainant relies in requesting relief, with the specific allegations necessary to reasonably inform the respondent of the nature of the claims the respondent is called upon to defend, with specific reference where practicable to the section or sections of all statutes, rules, regulations, orders, and tariffs upon which the complainant relies in filing a complaint.

While Ms. Rex' complaint stated adequate facts to ascertain that she asserted unjust and inaccurate billing and unreasonable acts by Consumers, she did not include the specific rules or statutes that she believes the utility violated. However, upon reading the complaint, it is apparent that Ms. Rex alleged violations of the Consumer Standards and Billing Practices for Electric and Gas Residential Customers and the Technical Standards for Electric Service:

Mich Admin Code, R 460.130(a), A utility shall establish personnel procedures that, at a minimum, ensure all of the following: (a) That qualified personnel are available and prepared at all times during normal business hours to receive and respond to all customer inquiries, service requests, and complaints. . . .

Mich Admin Code, R 460.137(c), Subject to requirements of these rules, a utility may shut off or terminate service to a residential customer for any of the following reasons: (c) The customer has engaged in unauthorized use of utility service.

Mich Admin Code, R 460.3309(1)(d), (1) An adjustment of bills for service for the period of inaccuracy shall be made for over registration and may be made for under registration under any of the following conditions: (d) If a meter registration has been found to be inaccurate due to apparent tampering by a person or persons unknown.

The burden of proof for a formal complaint is set forth in Mich Admin Code, R 792.10446:

The complainant generally has the burden of proof as to matters constituting the basis for the complaint and the respondent has the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed, or may shift, as provided by law or as may be appropriate under the circumstances.

The standard of proof is noted by the ALJ: “[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence.” *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985).” PFD, p. 30.

Ms. Rex explained that she was absent from her rural West Michigan home during the period beginning November 2016 and ending on April 8, 2017. When she returned home, she discovered that her electric service was off and her basement contained a foot of water. Appliances, sump pump, and other mechanicals were ruined. Food was spoiled. Complaint, p. 1, 1 Tr 22-24. When Ms. Rex called Consumers to get the electricity restored, a series of events took place about which this complaint is filed. Ms. Rex asserted that Consumers’ employees objected to her taking pictures of them, attempted to argue with her, accused her of theft of electricity and tampering with her meter, parked a truck on her property and watched her, constantly drove their trucks in back of her house, and flew helicopters near her home to watch her. Complaint, pp. 1-2; 1 Tr 48.

On the afternoon of April 8 and in response to Ms. Rex’ call that her electricity was out, a Consumers’ employee came to her house and re-fused the transformer on a primary pole to her house. Within minutes, the transformer blew the new fuse. The employee pulled out Ms. Rex’ meter and again attempted to re-fuse the transformer. This time, the transformer was “good.” 1 Tr 56-57. The employee took the Complainant’s analog meter, and told her that the meter had been tampered with. 1 Tr 23, 27-28; Ms. Rex’ Exhibit 6. Later that evening, Consumers’ personnel installed a non-transmitting digital meter. 1 Tr 23, 58; Ms. Rex’ Exhibit 10.

Consumers tested Ms. Rex’ analog meter and determined that it had been tampered with; *i.e.*, an adjustment screw on the meter had been moved and was not registering all the electricity used. 1 Tr 74-77; Consumers’ Exhibit C-1. The utility contended that its records showed that the meter

registered a dramatic drop in usage beginning in July 2015, and attributed the drop in usage to tampering. Ms. Rex' new meter registered an average of 31.8 kilowatts (kW) consumption per day; her old meter registered an average of 14.8 kW consumption per day. Consumers determined that the difference in the billed average daily consumption for the previous 606 days and the average daily consumption registered in the 33 days following installation of the digital meter amounted to 10,300 unbilled kW or \$1,576.35 of unbilled, unauthorized use of electricity. 1 Tr 77-80; Consumers' Exhibit C-2. The utility did not take into account that the Complainant was away from home for several months or inquire into any changes that may have taken place on the property causing the reduced consumption. Nor did it detail the meter's chain of custody following its removal from the Complainant's home. PFD, pp. 31-32; 1 Tr 74-87.

Customers who are involved in theft of electricity are not eligible to opt out of smart meter installation. On or about May 2017, following Consumers' determination that Ms. Rex had tampered with her meter resulting in theft of electricity, a smart meter was installed at her house. 1 Tr 75-87. Consumers issued a notice that her electric service would be shut off on or after May 22, 2017, unless the amount owed for unauthorized use of electricity was paid. 1 Tr 31.

Ms. Rex testified to a number of events and conditions that may have affected her usage or the function of her meter. She stated that, at one time, her son had run a welding business from one of her outbuildings. The Complainant did not indicate when her son ceased business activities on her property. She also related that, in 2013, workers driving a dump truck on her property accidentally snagged her electric lines, pulled down her pole, and detached her meter from her house. Consumers came out and pushed the pole upright, checked her meter, and put a seal on it. Later that day, the pole fell over again and Consumers replaced it. Ms. Rex reiterated that she was away from her home from November 2016 until April 8, 2017. 1 Tr 22-23, 44-46.

Additional evidence of meter tampering related to the physical appearance of the meter as observed by the Consumers' employee who responded to the electric outage call. 1 Tr 53-57. There were questions as to whether the meter had a ring or seal on it and the color of the seal, with Consumers contending that the meter did not appear as it should. Ms. Rex' electrician testified that during April 2017, he cut the seal on the Complainant's meter box and applied silicone to areas surrounding the meter to prevent water entering into the meter box and circuit panel. He also drilled a hole in the bottom of the meter socket so water could drain. The record does not clearly state the exact date these things were done. The electrician speculated that water could have been coming in for years through the pipe that housed the wires to the meter. He also testified that not all meters have rings, depending on the age of the meter. 1 Tr 13-21; Ms. Rex' Exhibits 2-5. Consumers' witness did not have first-hand knowledge of the appearance of the meter installation. 1 Tr 56-57.

In her PFD, the ALJ indicates "that there is a lack of sufficient evidence in the record to support a finding of 'unauthorized use' by Complainant through tampering with an adjustment screw on the analog meter." PFD, p. 32. She notes that evidence in support of such tampering is "hearsay only" because the Consumers' employees who initially examined the meter or had first-hand knowledge of the testing, did not appear at the hearing. PFD, p. 32; 1 Tr 74-75. Nor did the record establish that the meter screw had moved, and if so, that the movement was caused by tampering. PFD, p. 32. The ALJ found that, because there was insufficient evidence of tampering, the Complainant does not owe \$1,576.35 for unauthorized use of electricity or \$140.95 in investigation fees; she was improperly issued a shutoff notice; and the installation of a smart meter was not justified. *Id.*, pp. 31-32.

The Commission agrees with the ALJ on this matter. Lacking a preponderance of evidence of meter tampering, and in light of other plausible reasons for decreased electric usage, the record does not establish that the Complainant tampered with her meter or used electricity that was not registered on her meter. Further, the appearance of the meter installation was not conclusively proven to be caused by tampering. Accordingly, Ms. Rex does not owe Consumers \$1,576.35 for unauthorized use of electricity. As such, Ms. Rex' shutoff notice should be withdrawn, and a non-transmitting digital meter installed, if that is her wish.

The Commission notes Ms. Rex' preference for an analog meter; however, analog technology is outdated and no longer being installed (1 Tr 58), and the Complainant's old analog meter is not functional. Therefore, Ms. Rex may opt out of a smart meter, but not a digital meter.

Regarding smart meter installation, whereas the Commission fully supports a customer's right to opt out, smart meters are intended to improve customers' service, and when fully integrated, have proven to be valuable tools in prompt electric service restoration by rapidly identifying the outage location and freeing field crews from responding to duplicate calls or temporary outages. With use of a fully integrated smart meter, it is possible that a repeat of the lengthy electric service outage that Ms. Rex experienced in March and April 2017 might be prevented.

Ms. Rex testified that she placed a personal lock on her electric meter box. 1 Tr 22. The ALJ noted that there was likely "unauthorized use" through the placement of the personal padlock on the meter box. PFD, p. 31. However, the unauthorized use charge was made on the basis of tampering with the screw on the meter, not the placement of the padlock. *Id.*, pp. 31-32.

The Commission agrees with the ALJ on this matter. Although Consumers did not impose a tampering charge due to placement of the lock, they would have been within their rights to do so. When customers place personal locks on their meters, it creates a hazard for any utility employee



who may need access to the meter, as well as for the occupants of the home or building. The meter, though attached to a residence, is the property of the utility company. The utility company is legally responsible for maintenance and service of the meter so that safe and reliable service can be provided to customers.<sup>3</sup> It is essential that the company be able to access its meters without inhibition by locks, cages, or other locking devices.<sup>4</sup> This matter is of such a serious nature, that utility companies are permitted to shut off service to customers who, by placing a lock on their meter box, “adversely affect the safety of the customer or other persons or the integrity of the utility system.”<sup>5</sup> For these reasons, the Commission cautions the Complainant against placing a personal lock on her meter.

Ms. Rex testified to several encounters with Consumers’ employees that she deemed to be harassment by the utility. The alleged harassment included attempting to argue with her, watching her house, accusing her of tampering with her meter, requesting the photos she had taken of Consumers’ field staff, and flying helicopters around her home for the purpose of seeing if she was at her meter. Consumers testified that they did not harass the Complainant. 1 Tr 30-51; PFD, pp. 11-14, 19-21.

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<sup>3</sup> Technical Standards for Electric Service, Mich Admin Code, R 460.3605(1) states: “All electric quantities that are to be metered as provided in R 460.3301 shall be metered by commercially acceptable instruments which are owned and maintained by the utility.”

<sup>4</sup> Consumer Standards and Billing Practices for Electric and Gas Residential Service, Mich Admin Code, R 460.136 states, in pertinent part: “Notwithstanding any other provision of these rules, a utility may shut off service temporarily for reasons of health or safety or in a state of national emergency.”

<sup>5</sup> Consumer Standards and Billing Practices for Electric and Gas Residential Service, Mich Admin Code, R 460.137(g) states a reason for shut off: “The customer has violated any rules of the utility approved by the commission so as to adversely affect the safety of the customer or other persons or the integrity of the utility system.”

The ALJ concluded “that Complainant has not shown by a preponderance of evidence that [Consumers’] actions constituted improper harassment, threats or any violation of applicable standards and rules set forth in the Consumer Standards and Billing Practices, Mich Admin Code, R 460.101 *et al.* or Technical Standards for Electrical Service, Mich Admin Code, R 460.3101 *et al.*.”<sup>6</sup> PFD, p. 33.

The Commission agrees with the ALJ on this issue, but acknowledges that the Complainant has posted numerous “No Trespassing” signs on her property, and a large measure of her complaint is about Consumers’ employees entering her land. She does not feel safe. Complaint, p. 3; 1 Tr 28, 48. That being said, the Commission finds that utility personnel are required to respond to complaints, including electric service outage complaints. When attempting to resolve a complaint, the utility “may employ telephone communication, personal meetings, on-site visits, or any other method that is reasonably conducive to obtaining a statement.” Mich Admin Code, R 460.130(c); Mich Admin Code, R 460.151(3). In this instance, it appears that Consumers’ personnel were following Commission rules when they entered Ms. Rex’ property to work on her meter, talk to her about her complaint, and install a new meter. In addition, although the communication between the Complainant and the utility may have been somewhat tense, the Commission finds that Consumers’ actions were reasonable.

Taking Ms. Rex’ complaints against Consumers at face value, and considering the totality of circumstances, Consumers appears to have had cause to conduct an investigation, and cause to believe that tampering may have taken place. The record does not contain persuasive evidence that any of Consumers’ actions were for the purpose of harassing the Complainant. Nor does the

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<sup>6</sup> The full text of the Consumer Standards and Billing Practices for Electric and Gas Residential Service are available at the “Consumer Information” link on the Commission’s website.

record contain persuasive evidence that the interactions between Ms. Rex and Consumers' personnel rose to the level of harassment. Accordingly, the harassment portion of Ms. Rex' complaint is dismissed with prejudice.

### Conclusion

The Commission agrees with the ALJ's findings and conclusions, and adopts the PFD in its entirety. The evidence is not sufficient to establish that Ms. Rex tampered with her meter by turning the adjustment screw. Accordingly, while she likely had unauthorized use of electricity by placing a lock on her meter box, she did not have unauthorized use of electricity due to tampering with the screw on her meter. Therefore, Consumers improperly billed her for unauthorized use of electricity and improperly installed a smart meter. In addition, the record is not sufficient to establish that Consumers harassed Ms. Rex.

THEREFORE, IT IS ORDERED that:

- A. Consumers Energy Company shall withdraw its shutoff notice and the bill issued to Bonnie Rex for unauthorized use of electricity.
- B. Consumers Energy Company shall remove the smart meter from Ms. Rex' home and install a non-transmitting digital meter.
- C. The remainder of Ms. Rex' complaint is dismissed with prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungp1@michigan.gov](mailto:pungp1@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of November 21, 2017.

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Kavita Kale, Executive Secretary